

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ALBERT SCHUHOLZ,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 05-3073-CV-S-RED-H
ROBERT McFADDEN, Warden,)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to assert that the Court possesses jurisdiction under 28 U.S.C. § 2241 to determine the legality of his sentence. It is his position that he is challenging the execution of his sentence, which was imposed in the Eastern District of Kentucky. He contends that he is being illegally and involuntarily incarcerated at the Medical Center on the grounds that there was a defective indictment, he was falsely sentenced, and there was a murder plot against him in Kentucky.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed on the grounds that it is not properly before this Court. Regardless of

petitioner's assertions, it is clear that he is challenging the sentence imposed, and he has failed to demonstrate that 28 U.S.C. §2255 is an ineffective or inadequate vehicle to test the legality of his sentence. Accordingly, the Court finds that the conclusion of the Magistrate should be approved.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr
Richard E. Dorr
United States District Judge

Date: April 24, 2006